IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

FAO.No. 146 of 2007()

AGAINST THE ORDER DATED 09/04/2007 IN IA.1373/2007 IN AS.168/2000 of PRINCIPAL SUB COURT,PARAVUR

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APPELLANT/RESPONDENT/APPELLANT/PLAINTIFF:

KRISHNAN, S/O.KUNJAYYAPPAN,
KUNNILPARAMBIL VEETTIL,
KOTTAPPURAM KARA, ALANGAD VILLAGE,
PARAVUR TALUK.

BY ADV. SMT.SADHANA KUMARI.

RESPONDENT/PETITIONER/RESPONDENT/1ST DEFENDANT:

AZHAKI, D/O.CHATHAN,
KUNNILPARAMBIL, KOTTAPPURAM KARA,
ALANGAD VILAGE,PARAVUR TALUK.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O. No. 146 of 2007

Dated this the 6th June, 2007.

J U D G M E N T

This First Appeal from Order is filed against an order passed by the court below, in an application filed by the respondent, first defendant, in A.S.No.168/2000. The appellant is the plaintiff in O.S.No.18/1996, on the file of the Munsiff's Court, Paravur, which was filed for a mandatory injunction directing the defendant to remove a structure. The trial court found that the appellant is the owner, but the prayer for mandatory injunction was refused. Challenging that part of the decree by which the prayer for mandatory injunction was disallowed, the appellant filed A.S.No.168/2000. In that appeal, the respondent filed I.A.1373/2007, to restrain the appellant from causing any obstruction to her, for thatching the building. That prayer was allowed subject to filing an undertaking that the respondent (the petitioner in I.A.1373/2007) is ready and willing to do, in accordance with the final order of the court below. Challenging that order, this F.A.O. is filed.

2. According to the appellant, the averment that he is causing any obstruction for thatching the building is false. He submitted that the building collapsed two years prior to the date of filing of the application, and attempt of the respondent is to put up a new structure in the guise of thatching the same. If, as a matter of fact, the respondent is making any attempt to make a new construction, it is open to the appellant to move the lower appellate court for appropriate relief. The only relief now granted is to thatch the building, on the assumption that the building is in existence. So, I do not find any reason to interfere with the order passed by the court below.

3. There is yet another aspect. The appeal is pending from 2000 onwards. There is absolutely no justification in keeping the appeal on file. Hence, I am of the view that it is only just and proper to direct the lower appellate court to hear and dispose of the appeal, at the earliest.

4. In the result, the F.A.O. is disposed of with a direction to the Principal Sub Court, North Paravur, to hear and dispose of the appeal itself, A.S.No. 168/2000, as expeditiously as

possible, at any rate, within one month from the date of receipt of a copy of this judgment, if necessary, by suo motu advancing the hearing of the case with due notice to both sides.

K.PADMANABHAN NAIR,
JUDGE

nj.